HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 421 of 2003 (S/S)

Shri Tara Chandra Pant
vs.
Chief Engineer, P.W.D. Dehradun.

Approved for reporting.

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Not approved for reporting

Date of decision 13.07.2005

Initial of Judge

IN THE HIGH CORUT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 421 (S/S) OF 2003

Shri Tara Chandra Pant,
S/o late Shri Puran Chand Pant,
R/o Village Khitoli
Post Berinag, District Pithoragarh.....Applicant.

Versus

1. Chief Engineer, Uttaranchal Public Works Department, Dehradun.
2. Chief Engineer (Kumaon Division) P.W.D. Almora.
3. Superintendent Engineer 12th Circle P.W.D. Pithoragarh.
4. Executive Engineer, P.W.D. Berinag, Pithoragarh.

.....Respondents.

Dated: July 13, 2005

Mr. Narayan Dutt, learned counsel for the applicant.
Learned Standing Counsel.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari to quash the order dated 28.10.2002 passed by the Superintendent Engineer 12th Circle P.W.D. Pithoragarh and has further prayed for a writ of mandamus commanding the respondents to consider the appointment of the petitioner in the Department under the U.P. Dependents of Government Servants (Dying in Harness) rules, 1974.

Briefly stated, the father or the petitioner, late Sri Puran Chand Pant was appointed as Work Supervisor in work charged establishment of P.W.D., Pithoragarh. He died in harness on 31.05.1975.

At the time of death of his father, the petitioner was aged about four months. He has submitted that his mother moved applications on 04.08.1976, 07.03.1978, 17.05.1980, 24.04.1982 and on 03.12.1986 for the family pension and for her

appointment under Dying in Harness Rules, but the respondents did not consider the same.

Petitioner after attaining the age of majority filed a representation before the respondents for his appointment under Dying in Harness Rules on 04.12.1995. The respondents did not take any action on the representation of the petitioner and, therefore, the petitioner filed a Writ Petition no. 123 (S/B) of 2002 before this Court.

The court vide order dated 22.03.2002 finally disposed of the writ petition and directed the respondents to consider the claim of the petitioner for his appointment under U.P. Dependent of Government Servants (Dying in Harness) Rules, 1974 within a period of one month from the date of production of certified copy of that order.

Therefore the respondents considered the representation of the petitioner and passed a reasoned order on 28.10.2002 dismissing the representation of the petitioner on the grounds that the petitioner filed the representation after the prescribed period of limitation. The respondents also referred G.O. No. 1188/23-4-96-26एन0जी0/93 दि016.03.96, in which it has been mentioned that the Dying in Harness Rules shall be applicable also in case of the employees working in work-charge establishment and having completed ten years' service but the father of the applicant had not completed ten years' service in the work charge establishment on the date of his death. The respondent has also referred G.O. 225/कार्मिक–2–2002 दि0 8–2–2002, in which employment under Dying in Harness Rules has been denied after a long period of the death of a government servant.

The petitioner has also filed contempt petition no. 248/2002 against the respondents before this court. The court

has dismissed the contempt petition on 09.06.2003 and passed the following order:-

"In view of the direction to consider the claim of the petitioner the respondent-authority has passed a reasoned order on 28.10.2002 which is Annexure-CA4 to the counter affidavit and it indicate that the compliance of the order of the Court had in fact been made. If the petitioner is aggrieved, in any way he may file a fresh petition seeking appropriate relief in her favour. Considering the reasoned order passed by the respondent-authority, it cannot be said that the contempt of the court has been committed.

The petition is dismissed and the notices are discharged."

Feeling aggrieved, the petitioner has filed the present writ petition.

The respondents have filed counter affidavit and has asserted that the claim of the petitioner was examined in the light of the provision of Dying in Harness Rules and Government Orders, but the claim was found to be legally untenable because the father of the petitioner was not regular appointed employee and he was appointed in work-charge establishment and had not completed ten years service. The petitioner cannot claim appointment as of right under Dying in Harness Rules. The claim of the petitioner cannot be entertained after expiry of more than 25 years. The respondents also referred G.O. dated 8th February, 2002 (Annexure CA-3 to the Counter Affidavit). The relevant paragraph of the said G.O. is quoted below:-

"ऐसे प्रकरण प्रस्तुत हुए है जिनमें 20 वर्ष से अधिक का समय व्यतीत हो चुका है अथवा यह कहा गया है कि सरकारी सेवक की मृत्यु के समय आवेदनक पुत्र/पुत्री अवयस्क थी अब वयस्क होने पर आवेदन किया जा रहा है। विलम्ब से नियुक्ति हेतु

आवेदन के प्रकरणों में आवेदन करने की अवधि के षिथिलीकरण हेतु शासन से अनुरोध किया जाता है। इस संबन्ध में मा0 उच्चतम् न्यायालय द्वारा उमेष नागपाल व हरियाणा राज्य व अन्य (1994) 4 SCC 138 (प्रति संलग्न) में यह स्पष्ट किया है कि लोक सेवाओं में नियुक्ति का सामान्य नियम सार्वजनिक निमंत्रण और प्रवीणता का होना चाहिए अपवाद रूप में मृतक सरकारी सेवक के परिवार के सदस्यों को अचानक आयी विपदा से उबरने के लिए नियुक्ति दी जा सकती है, परन्तु सरकारी सेवक की मृत्यु के लम्बे समय बाद उक्त नियमावली के अन्तर्गत नियुक्ति दिये जाना चयन के नियमों के बाहर नियुक्ति प्रदान करना है जो उचित नही है।"

A perusal of the record shows that the petitioner applied for appointment under Dying in Harness Rules after more than 25 years after the death of his father, however, in compliance of the order passed by this Court in Writ Petition No. 123 (S/B) of 2002, the Superintendent Engineer PWD, Pithoragarh has considered the representation of the petitioner and passed a reasoned order. Thus the respondents have decided the representation of the petitioner and he was not found eligible for appointment under the rules and G.O.s. If the petitioner wants some relaxation in the terms and conditions of the Dying in Harness Rules and relevant Government Order for his appointment and for condonation of delay in filing the representation for appointment, he may move to the Government through the appropriate authorities of the respondents.

In the case ***National Hydroelectric Power Corporation and another Vs. Nanak Chand and others, 2004 AIRSCW 6339,*** the Apex Court has held that the purpose of appointment under Dying in Harness Rules is to mitigate the hardship caused due to the death of the bread-earner in the family. The application made after delay of ten years of death of the father of the applicant cannot be entertained.

In State ***of U.P. and others Vs. Paras Nath 1998 SCC,*** it was held that the purpose of providing employment to the dependant of a government servant dying-in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointment are permissible on compassionate grounds provided there are Rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

These aspects were further highlighted by the Apex Court in ***State of Manipur v. Md. Rajaodin (203(7) SCC511); State of Haryana & Anr. v. Ankur Gupta (2003(7)SCC 704); Haryana State Electricity Board v. Naresh Tanwar (1996 (8) SCC 23)*** and ***Haryana State Electricity Board v. Hakin Singh (1997(8) SCC85)*** and ***Punjab National Bank and Ors. v. Ashwini Kumar***

Taneja (Civil Appeal No. 5256 of 2004 decided on 16.8.2004)"

The learned counsel for the petitioner further submitted that the respondent vide letter dated 05.11.1997 informed the petitioner that there was a vacant post of BELDAR and if the petitioner is desirous to work on that post his candidature may be considered for appointment on that post. He submitted application along with his document for appointment on that post but appointment has not been given to him. He referred to the following paragraph of the letter dated 5.11.1997:-

"उपरोक्त विषय में संदर्भित पत्र के क्रम में अवगत कराना है कि इस खण्ड बेलदार का पद रिक्त है। अन्य पदों रिक्तिया नहीं है। यदि आप बेलदार के पद पर कार्य करने को सहमत हैं तो लिखित रूप से एक सप्ताह के अन्तर्गत अपनी सहमति दें तभी आपकी नियुक्ति पर विचार किया जायेगा।"

This judgment, however, will not stand in the way, if the respondents further consider the case of the petitioner sympathetically on any ground or under any scheme by administrative decision.

Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

Dated: July 13, 2005
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